

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: FIRST DEPARTMENT

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AHMAD AWAD, SOFIA DADAP,
SAPPHIRE LURIE AND JULIE NORRIS,

Petitioners-Respondents,

INDEX: 153826/17

- against -

FORDHAM UNIVERSITY,

Respondent-Appellant.
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**NOTICE OF MOTION FOR LEAVE TO FILE *AMICUS*
CURIAE BRIEF**

Attorney for Amicus Curiae

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**NOTICE OF MOTION OF DEFENDING
RIGHTS & DISSENT FOR LEAVE TO FILE
A BRIEF AS *AMICUS CURIAE* IN SUPPORT
OF PETITIONERS-RESPONDENTS.**

PLEASE TAKE NOTICE, that upon the annexed Affirmation of Katherine M. Franke, Esq., duly affirmed and upon all exhibits thereto including a copy of the proposed brief of *amicus curiae*, the undersigned will move this Court at 27 Madison Avenue, New York, NY 10010 at, 9:30 a.m. on November 23, 2020, or as soon thereafter as is practical, for an order granting leave to Defending Rights & Dissent to file with this Court a brief as *amicus curiae* in support of Petitioners-Respondents in the above-styled action, pursuant to 22 N.Y.C.R.R. § 1250.4(f). Petitioners-Respondents have consented to the proposed submission.

Dated: November 13, 2020

Respectfully Submitted,

A handwritten signature in black ink that reads "Katherine Franke". The signature is written in a cursive style with a long horizontal line extending to the right.

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AFFIRMATION

Katherine M. Franke, an attorney duly admitted to practice law in the Courts of the State of New York, states the following under penalty of perjury:

1. I have been retained *pro bono* to make this motion on behalf of proposed *amicus curiae* Defending Rights & Dissent pursuant to 22 N.Y.C.R.R. § 1250.4(f). As such, I am fully familiar with the facts and the circumstances from the information furnished by my client pertinent to this issue and as set forth below.
2. The proposed brief in support of Petitioners-Respondents is submitted on behalf of the Defending Rights & Dissent identified therein, an organization based in the United States that works to defend fundamental rights to political speech and association.
3. This Affirmation is submitted in support of Defending Rights & Dissent's motion for leave to submit a brief as *amicus curiae* regarding Fordham University's improper decision to deny club recognition to Students for Justice in Palestine

(“SJP”), as inconsistent with fundamental values of democratic participation and academic freedom.

4. Specifically, *amicus curiae* seeks to underscore that the Dean of Students’ decision to reject Petitioners-Respondents’ student club application is not warranted. Indeed, to the contrary, university administrators should commit themselves to creating and defending academic settings for robust engagement with, learning about, and debate with a wide range of viewpoints on matters of public concern.

5. As set forth in the attached proposed brief, proposed *amicus curiae* is seeking for this Court to uphold the lower court’s application of the arbitrary and capricious standard in Fordham University’s unreasonable exercise of discretion in declining to recognize SJP, allowing for the improper politicization of peaceful activism.

6. Simply put, Respondent-Appellant deviated from usual practice and failed to adhere to its own institutional values and rules by undermining the very idea of democratic engagement and a right to political speech and association of its students.

7. A copy of the proposed brief is annexed hereto as Exhibit A.

8. For these reasons, Defending Rights & Dissent respectfully seeks this Court’s permission to file the attached *amicus curiae* brief.

Dated: November 13, 2020

Respectfully Submitted,

A handwritten signature in black ink that reads "Katherine Franke". The signature is written in a cursive style with a long horizontal stroke at the end.

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CERTIFICATION

Pursuant to 22 N.Y.C.R.R. § 130-1.1-a, I, Katherine M. Franke, an attorney admitted to practice law in the Courts of the State of New York do hereby certify, to the best of my knowledge and belief, that the following attached papers: **NOTICE OF MOTION, AFFIRMATION, and CERTIFICATION** are in accordance with the rules pertaining to this certification.

Dated: November 13, 2020

Respectfully Submitted,



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EXHIBIT A
PROPOSED BRIEF

New York County Clerk's Index No. 153826/17

Appellate Case No. 2020-00843

**NEW YORK SUPREME COURT
APPELLATE DIVISION – FIRST DEPARTMENT**

AHMAD AWAD, SOFIA DADAP, SAPPHIRA LURIE, JULIE NORRIS, and
VEER SHETTY,

Petitioners-Respondents,

v.

FORDHAM UNIVERSITY,

Respondent-Appellant.

BRIEF OF *AMICUS CURIAE* DEFENDING RIGHTS & DISSENT
IN SUPPORT OF PETITIONERS-RESPONDENTS

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TABLE OF CONTENTS

TABLE OF AUTHORITIES	3
STATEMENT OF INTEREST	5
ARGUMENT	8
CONCLUSION	20
PRINTING SPECIFICATIONS STATEMENT	22
CERTIFICATE OF SERVICE	23

TABLE OF AUTHORITIES

INTERNATIONAL LAW

Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 194912

Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, 2004 I.C.J. 131 (July 9, 2004)12

US CONSTITUTIONAL PROVISIONS

U.S. Const., Amdt. 1 *passim*

OTHER RELEVANT AUTHORITIES

“AAUP Takes UIUC to Task for Apparent Summary Dismissal,” American Association of University Professors, available at <https://www.aaup.org/import-tags/steven-salaita> (accessed October 26, 2020)17

“Anti-Boycott Legislation Around The Country,” Palestine Legal, available at <https://palestinelegal.org/righttoboycott> (accessed October 26, 2020)15

Judith Butler, *Parting Ways: Jewishness and the Critique of Zionism* (2012) ...14

“DOE Dismisses Baseless Complaint” Palestine Legal (September 16, 2014) available at <https://palestinelegal.org/news/2014/09/16/1708> (accessed November 9, 2020)18

Erica L. Green, “Education Dept. Reopens Rutgers Case Charging Discrimination Against Jewish Students” (September 11, 2018) available at <https://www.nytimes.com/2018/09/11/us/politics/rutgers-jewish-education-civil-rights.html> (accessed November 10, 2020)18

Barbara Jones & Paul Shechtman, Report To Chancellor Milliken On Allegations Of Anti-Semitism (2016), available at <https://www.cuny.edu/wp-content/uploads/sites/4/page-assets/news/newswire/assets/CUNYReport.pdf> (accessed November 11, 2020)19

Walter Laqueur, *A History of Zionism* (Schocken Books, New York 1978)14

Mike Marqusee, *If I Am Not For Myself: Journey of an Anti-Zionist Jew* (2010)14

Jake Offenhartz, “Roger Waters Shows Will Go On Despite Nassau County Anti-BDS Law.” Gothamist (September 13, 2017) available at <https://gothamist.com/news/roger-waters-shows-will-go-on-despite-nassau-county-anti-bds-law> (accessed October 26, 2020)18

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“UMass Amherst: Lawsuit Attacking Free Speech Event,” Palestine Legal (December 13, 2019) available at <https://palestinelegal.org/case-studies/2019/5/31/umass-amherst> (accessed October 28 2020)17

Naomi Zeveloff, “How Steve Bannon and Breitbart News Can Be Pro-Israel — and Anti-Semitic at the Same Time”, *The Forward* (November 15, 2016), available at <https://forward.com/news/israel/354402/how-steve-bannon-and-breitbart-news-can-be-pro-israel-and-anti-semitic-at-t/>, (last accessed November 12, 2020)14

Zionist Organization Attempts Censorship of Columbia Workshop on Israel/Palestine, available at <https://ccrjustice.org/home/blog/2015/06/22/zionist-organization-fails-censor-columbia-university-workshop-israelpalestine> (accessed on November 11, 2020)15

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**BRIEF OF *AMICUS CURIAE* DEFENDING RIGHTS & DISSENT
IN SUPPORT OF PETITIONERS-RESPONDENTS**

STATEMENT OF INTEREST

Defending Rights & Dissent is a national organization dedicated to fulfilling the promise of the Bill of Rights, particularly the right to political dissent. One of our core organizational values is the idea that freedom to dissent is essential to a functioning democracy. As such, we place a special emphasis on defending the right to engage in political expression. This is, in part, because of our own history. Our organization traces its founding back to the time when individuals were summoned to testify before the House Un-American Activities Committee. In addition to being founded by victims of McCarthyism, our organization was subjected to illicit surveillance by the Federal Bureau of Investigation.

Our work aims to defend a robust conception of participatory democracy by defending fundamental rights to political speech, assembly, and protest. We work to combat governmental and non-governmental efforts to censor speech and political action in both public and private contexts. A particular focus of our work has been to combat efforts to silence political speech in educational contexts, including efforts to curtail free speech and academic freedom rights of students. We are committed to the idea that a robust democracy depends upon the rights of students to learn about, debate, and engage a wide range of ideas.

As a domestic civil liberties organization, we do not take positions on international issues like the Middle East conflict. We do, however, support the right of all people to speak out freely, especially in academic contexts. When it comes to a topic like US foreign policy, we believe rigorous debate is essential for our democracy. We also recognize the devastating impact on our democracy of the tactics used by individual and organizations seeking to impose a political orthodoxy – such as McCarthyism in the 1950s and 1960s, and more recent political movements seeking to silence political speech they oppose – and actively strive to prevent a repeat of that history.

Amicus curiae Defending Rights & Dissent has a strong interest in the issues raised in this appeal as they strike at the core of rights fundamental to the healthy democracy: students' rights to political speech and political association. As an expert in fundamental rights to speech, dissent, political association, and

historical efforts to censor, silence, or abridge those rights, *amicus curiae*

Defending Rights & Dissent offers this *amicus* brief to help guide the Court's review of the appeal from the trial court's ruling in Petitioners' favor.

ARGUMENT

Amici appearing in support of Respondent-Appellant have argued that Fordham University is justified in restricting campus speech and political association to one side of an active political debate in the US because conferring club status upon student applicants “Students for Justice in Palestine” (SJP) would necessarily pollute Fordham’s learning environment with bigotry toward Jewish students, and that the students seeking club status would most certainly engage in violence, harassment, and other activities that violate Fordham University’s codes of conduct. *Amici* appearing in support of Respondent-Appellant make this argument deploying innuendo, demonstrated falsehoods, and gross stereotyping.

This kind of smear tactic is reminiscent of a range of contexts in the US where public and private officials sought to curtail speech and political association on matters of public concern around which there is strong disagreement. Most importantly, there is no credible evidence of these allegations in the record in this case. Rather, the fear-mongering engaged in by *amici* such as the Zionist Organization of America, traffics in untruths, bigoted stereotypes, and innuendo in order to fabricate a marketplace of ideas in which they alone have a monopoly on speech, having silenced parties who hold views different from their own. There is no evidence in this record that the student Petitioners-Respondents will engage in any of the violent acts conjured by *amici*,

nor that the protected political speech and public education that they would undertake on behalf of the human rights of Palestinians would be necessarily anti-Semitic. It is our firm belief that no student should be persecuted, harassed, discriminated against, or suffer violence on account of their identity, political views, speech, or association. Rather, university administrators should commit themselves to creating and defending academic settings for robust engagement with, learning about, and debate with a wide range of viewpoints on matters of public concern that respects a rich diversity of identities and viewpoints. In effect, by refusing the confer club status on SJP-Fordham, the university has created a one-sided forum for debate on its campus regarding a matter that is being debated much more openly in other universities, in Congress, in the media, and indeed even in Israel and Palestine. This action amounts to the university taking sides in a matter of public concern and censoring the viewpoints with which it disagrees.

This kind of insubstantiated fear-mongering undermines the very idea of democratic engagement and a right to political speech and association. So too, it undermines core values of academic institutions. Defending Rights & Dissent was founded to object to very similar fear-mongering in the 1950s and 1960s. Actual and suspected members of the Communist Party, along with those who opposed the actions of the House Committee on Un-American Activities (sic), were falsely vilified as anti-American, terrorists, and a threat to public welfare

and safety. The ACLU was founded in the 1920s in response to the abusive practices deployed by the government to fight the so-called Communist threat. Defending Rights & Dissent emerged in 1960 to defend the right to dissent from abusive policies by the US government. From our vantage point today, the political persecution of that period is uniformly condemned as unconstitutional and understood as having posed an extreme threat to democracy and American values.

When our organization and our allies protested the actions of the United States government to identify and punish actual and supposed Communists in this country, we weren't exhibiting bias toward the people of the United States, but rather were objecting to specific government policies that punished political speech and association. Protesting the actions of a state, whether it be the actions of the United States government, or as is relevant to the case herein, the state of Israel, is not the same thing as hatred toward the people who make up the majority of citizens in that state. Almost every government across the globe has been criticized for its human rights record, and/or the way in which it treats a political/racial/religious/ethnic minority. Consider examples such as the Burmese government's persecution of Rohingya Muslims, the Chinese government's treatment of Uyghurs and political dissidents, the Turkish government's refusal to recognize the Armenian genocide, the Iranian government's persecution of people of the Baha'i faith, or the Ugandan government's "kill the gays" law. It

would be a perversion of this history to treat political speech critical of Myanmar, China, Turkey, Iran, Uganda or Israel as forms of national origin or race discrimination rather than a time-honored form of political protest against violations of human rights.

Many advocates for justice in the Middle East point to a wide range of human rights violations committed by the State of Israel that include: the illegal 50-year occupation of the West Bank, Gaza, and East Jerusalem in violation of, among other legal texts, the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 1949; the wall constructed by the Israelis that has been found by the International Court of Justice to violate multiple provisions of international law;¹ the forcible dispossession and exile of Palestinians from their property and territory in 1948 with no right of return or reparation; military campaigns directed by the state of Israel against Palestinians living in Gaza that violated rules of proportionality, targeting of civilians and civilian institutions (such as hospitals, schools, water supplies, sewer systems etc.), and use of chemical weapons; and discrimination against Palestinians living in the state of Israel itself; among other charges of violations committed by the Israeli state against Palestinians. Disagreement exists among legal scholars,

¹ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, 2004 I.C.J. 131 (July 9, 2004) available at <https://www.icj-cij.org/public/files/case-related/131/131-20040709-ADV-01-00-EN.pdf> (accessed November 12, 2020).

jurists, and relevant public officials about the merits of these claims, yet these claims have gained legitimate attention and concern in respected international legal bodies and tribunals. None of these claims, however, are premised upon an animus toward the Jewish people, but rather concern the actions of a state, in this case, the state of Israel. They raise serious matters of public concern that land in the core of political speech protected by the First Amendment, by international law, and by fundamental principles of academic freedom. To reduce a political movement that seeks to hold a state accountable to international legal rules to a form of bigotry insults the very idea of international law and those who seek its enforcement. Surely this robust political debate should be allowed to take place on a university campus, as do other contentious debates around issues such as climate change, immigration policy, reparations for slavery, to name only a few examples.

Student groups such as SJP have as their mission the defense of the human rights of Palestinians, which includes condemnation of human rights abuses committed by the state of Israel. It also includes, for some, a rejection of certain versions of the Zionist political movement, grounded in the philosophy that God intended the territory traditionally known as “historical Palestine” as belonging to the Jewish people as their homeland. Some Jews support this philosophy, as do some Evangelical Christians who believe that the gathering of the Jews in Israel is a prerequisite for the Second Coming of Jesus. But a diverse group of people,

from a range of religious traditions, have also been opposed to political Zionism, including many Jews. Some Orthodox Jews believe that Israel can only be regained miraculously. They view the present state as a blasphemous human attempt to usurp God's role, and many actively work to dismantle the secular state of Israel. Some Reform Jews oppose political Zionism, or the notion that Israel is a Jewish homeland, because they reject Judaism as a national or ethnic identity and renounce any messianic expectations of the advent of a Jewish state. Still other Jewish people opposed political Zionism and the founding of a Jewish state in Palestine because they saw it as a threat to efforts to facilitate citizenship and equality for Jews living outside Israel/Palestine.² And some Jewish people believe that political Zionism actually violates Jewish values.³ To be sure, there may be some people or groups who oppose political Zionism for anti-Semitic reasons, but to condemn all people who hold and/or voice anti-Zionist views as necessarily anti-Semitic is patently false and contrary to the historical record. Both Jews and non-Jews support the Zionist justification for the state of Israel, and both Jews and non-Jews oppose it.

² See generally, Walter Laqueur, *A History of Zionism* (Schocken Books, New York 1978); Mike Marqusee *If I Am Not For Myself: Journey of an Anti-Zionist Jew* (2010); Naomi Zeveloff, "How Steve Bannon and Breitbart News Can Be Pro-Israel — and Anti-Semitic at the Same Time", *The Forward* (November 15, 2016), available at <https://forward.com/news/israel/354402/how-steve-bannon-and-breitbart-news-can-be-pro-israel-and-anti-semitic-at-t/>, (last accessed November 12, 2020); Jack Ross, *Rabbi Outcast: Elmer Berger and American Jewish Anti-Zionism*; *Chomsky Reader*, Peck, James (ed.), (1987) 7.

³ See e.g. Judith Butler, *Parting Ways: Jewishness and the Critique of Zionism* (2012).

Contrary to the arguments made by *amici* supporting Respondent-Appellant, there is ample evidence from campuses across the country that students defending the rights of Palestinians have experienced harassment, censorship, discrimination, and even violence from individuals and organizations seeking to defend political Zionism. In order to understand the circumstances under which Fordham refused to confer club status on Students for Justice in Palestine-Fordham, it is important to understand the harassment endured by supporters of Palestinian rights, from fellow students, from university officials, and from external advocacy organizations. Supporters of Palestinian human rights face an atmosphere of repression and intimidation that is reminiscent of the abuses of the McCarthy-era.

The Zionist Organization of America has written threatening letters to university presidents demanding that events concerning Palestinian rights be canceled, even when they have no idea of what the speakers will say.⁴

Lawmakers have proposed making blacklists of organizations or individuals who support political boycotts for Palestinian rights so that they may be denied certain government benefits.⁵ Students groups, faculty, and events supportive of

⁴ *Zionist Organization Attempts Censorship of Columbia Workshop on Israel/Palestine*, available at <https://ccrjustice.org/home/blog/2015/06/22/zionist-organization-fails-censor-columbia-university-workshop-israelpalestine> (accessed on November 11, 2020); *Zionist Organization Fails to Censor Columbia University Workshop on Israel/Palestine*, available at https://www.huffpost.com/entry/zionist-organization-fail_b_7639874 (accessed November 10, 2020).

⁵ “Anti-Boycott Legislation Around The Country,” Palestine Legal, available at

Palestinian rights at both public and private colleges have been the targets of outside campaigns or administration attempts to restrict their speech. Supporters of Palestinian rights are often demonized or vilified as being anti-Semitic or supporters of terrorism. Extreme, but not uncommon, versions of this equate any speech supportive of Palestinian rights as being inherently anti-Semitic or akin to terrorism.

In 2013 an event was scheduled at Brooklyn College featuring scholar and University of California Berkeley Professor Judith Butler and Palestinian activist Omar Barghouti. The topic of the event was the use of Boycotts, Divestments, and Sanctions (“BDS”) as a means for achieving Palestinian human rights. While the event was organized by student groups, including Students for Justice in Palestine, it was co-sponsored by the Brooklyn College’s Political Science Department. This was in line with the department’s policy of cosponsoring student events regardless of viewpoint so far as they had some academic value.

Opponents of BDS responded by working to get the department to rescind its co-sponsorship or force the college to cancel the event altogether. These calls came not just from members of the community or civil society, but elected officials. Multiple elected officials, including a sitting member of Congress, publicly called on the department to rescind its co-sponsorship of the event.

<https://palestinelegal.org/righttoboycott> (accessed October 26, 2020).

Others, including a group of New York City Councilmembers, went so far as to threaten to cut funding to the school.⁶ Ultimately, the event went on as scheduled.

In 2014, Steve Salaita was hired to join the faculty at the University of Illinois at Urbana-Champaign. Salaita left his job as a tenured professor at Virginia Tech in order to take the position. Two weeks before he was set to begin his new job, the University of Illinois at Urbana-Champaign terminated Salaita due to tweets he had made about Israel's military operations in Gaza. This was condemned by the American Association of University Professors as a violation of academic freedom.⁷ To this date, Salaita has not been able to find a job in academia.⁸

In 2019, University of Massachusetts Amherst hosted a panel on "Not Backing Down: Israel, Free Speech and the Battle for Palestinian Human Rights." Ironically, a group of anonymous students brought a lawsuit to attempt to prevent the panel from taking place. This request was denied by a judge and the case was ultimately dismissed. The panel ended up taking place.⁹

⁶ Mairav Zonszein, "Attack on NY 'boycott Israel' panel threatens academic freedom," +972 Magazine (February 6, 2013) available at <https://www.972mag.com/attack-on-ny-boycott-israel-panel-threatens-academic-freedom/65500/> (accessed October 28 2020).

⁷ "AAUP Takes UIUC to Task for Apparent Summary Dismissal," American Association of University Professors, available at <https://www.aaup.org/import-tags/steven-salaita> (accessed October 26, 2020).

⁸ Emma Pettit, "'Ousted' From Academe, Steven Salaita Says He's Driving a School Bus to Make Ends Meet," The Chronicle of Higher Education (February 19, 2019) available at <https://www.chronicle.com/article/ousted-from-academe-steven-salaita-says-hes-driving-a-school-bus-to-make-ends-meet/> (accessed October 28, 2020).

⁹ "UMass Amherst: Lawsuit Attacking Free Speech Event," Palestine Legal (December 13, 2019) available at <https://palestinelegal.org/case-studies/2019/5/31/umass-amherst> (accessed

One of the panelists was Roger Waters, a former member of the band Pink Floyd, who has been outspoken in his support of Palestinian rights. As a musician, Roger Waters still tours and performs music publicly. In 2017, Waters played at the Nassau Coliseum. Nassau County passed a law forbidding contracts with those who boycott Israel. As part of his support for Palestinian rights, Waters has publicly expressed support for calls to achieve Palestinian human rights by boycotting Israel. In the run up to the concert, a New York State lawmaker publicly called for it to be cancelled by county officials citing this law. A private attorney also threatened to bring legal action against the venue for similar reasons.¹⁰

The Zionist Organization of America filed a complaint with the OCR concerning Rutgers University. Much like with other complaints conflating political speech about Palestine with anti-Semitic discrimination the complaint was dismissed.¹¹ The Department of Education found the complaint unfounded and dismissed it. However, following an appeal by the Zionist Organization of America this complaint was reopened under controversial circumstances.¹²

October 28 2020).

¹⁰ Jake Offenhartz, “Roger Waters Shows Will Go On Despite Nassau County Anti-BDS Law.” Gothamist (September 13, 2017) available at <https://gothamist.com/news/roger-waters-shows-will-go-on-despite-nassau-county-anti-bds-law> (accessed October 26, 2020).

¹¹ “DOE Dismisses Baseless Complaint” Palestine Legal (September 16, 2014) available at <https://palestinelegal.org/news/2014/09/16/1708> (accessed November 9, 2020).

¹² Erica L. Green, “Education Dept. Reopens Rutgers Case Charging Discrimination Against Jewish Students” (September 11, 2018) available at <https://www.nytimes.com/2018/09/11/us/politics/rutgers-jewish-education-civil-rights.html> (accessed November 10, 2020).

In addition to federal complaints, complaints have been filed at the local level. Following complaints by the Zionist Organization of America that Students for Justice in Palestine were responsible for anti-Semitic discrimination at the City University of New York (CUNY), CUNY opened an official investigation. Similar to OCR investigations, this investigation found that many of the incidents brought to its attention were political speech. According to the final report of the investigators, “much of what we have reported is protected speech. Die-ins, mock checkpoints, and the SJP banner may offend some, but the First Amendment does not permit a public university to take action against them.”¹³

The Zionist Organization of America in its initial complaint explicitly called for Students for Justice in Palestine chapters to be banned. The investigators responded to this by stating that their investigation “does not support that action.”¹⁴ Going further, they stated there was a “tendency to blame SJP for any act of anti-Semitism on any CUNY campus.”¹⁵

Supporters of Israeli policies are entitled to the same level of First Amendment protections as supporters of Palestinian human rights. However, the behavior described above far exceeds spirited or even contentious debate. It is an

¹³ Barbara Jones & Paul Shechtman, Report To Chancellor Milliken On Allegations Of Anti-Semitism 20 (2016), available at <https://www.cuny.edu/wp-content/uploads/sites/4/page-assets/news/newswire/assets/CUNYReport.pdf> (accessed November 11, 2020).

¹⁴ Id. at 23-24.

¹⁵ Id.

attempt to use official channels of power, such as state legislatures, college administrations, or civil rights oversight bodies to censor their opponents. This includes the Zionist Organization of America and StandWithIsrael, who have submitted *amicus* briefs in this case. While the record has shown the Fordham Students for Justice in Palestine is independent and autonomous, *amicus* have made arguments about the actions of other Students for Justice in Palestine groups. These arguments are largely repetitions of past claims arguing for the censorship of Palestinian human rights supporters.

Petitioners-Respondents in this case filed a motion opposing the Zionist Organization of America's motion for leave to file an *amicus* brief. In their motion, they cited the Zionist Organization of America's brief as containing "verifiable falsehoods that do not appear in the Record."¹⁶ These include, but are not limited to, the Zionist Organization of America's characterizations of an investigation into anti-Semitism at the City University of New York and a Title VI complaint filed by the Zionist Organization of America's about University of California Irvine.¹⁷ Both of these events are referenced above. As the Petitioners-Respondents note, the Zionist Organization of America's represents the investigation into anti-Semitism at the City University of New York as affirming allegations that Students for Justice in Palestine engaged in anti-Semitic

¹⁶ Pet'rs' Opp'n to ZOA's Mot. for Leave to File Amicus Br. 1.

¹⁷ Id. at 2.

incidents, when in fact the report vindicated Students for Justice in Palestine.¹⁸ While the Zionist Organization of America mentions its own complaint filed against the University of California Irvine, it neglected mention that the complaint was dismissed by the OCR.¹⁹ In both instances, much of the activity about which the Zionist Organization of America complained was found to be political speech protected by the First Amendment.

While the instant case is about the decision by Fordham to deny official recognition to Students for Justice in Palestine, this decision occurred in a larger context. This context includes an environment reminiscent of the abuses of the McCarthy-era. Supporters of Palestinian human rights have not only been falsely demonized and vilified, but those in political opposition to their aims have sought the intervention of official or quasi-official bodies to silence them. It is therefore paramount to take into account the atmosphere of intimidation and censorship that Palestinian human rights supporters face.

CONCLUSION

The court should recognize that fundamental values of democracy, including rights to political speech and association, would be furthered by fostering robust debate and learning about the rights and interests of both Israelis and Palestinians in academic contexts. Arguments that falsely portray Palestinians

¹⁸ Id. at 2-4

¹⁹ Id. at 6.

and those who support Palestinians' human rights as necessarily anti-Semitic and violent are using a well-worn tactic deployed by those who seek to preemptively silence their opponents by demonizing them. We saw this tactic used by McCarthyites seventy years ago, and by white supremacists and segregationists who opposed the civil rights movement during the same period. The court should not countenance the use of similar smear tactics in this context, especially when they are used to undermine academic freedom and the robust exchange of ideas on a college campus.

PRINTING SPECIFICATIONS STATEMENT

Pursuant to 22 NYCRR §§ 1250.8(f) and (j)

The foregoing brief was prepared on a computer using Microsoft Word.

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The total number of words in the brief, inclusive of point headings and footnotes and exclusive of signature blocks and pages including the table of contents, the table of citations, proof of service, certificate of compliance or any addendum authorized pursuant to 22 NYCRR 1250.8(k), is 4,842 words.

CERTIFICATE OF SERVICE

I hereby certify that on November 13, 2020, I electronically served the foregoing *Amicus Curiae* brief via NYSCEF, which sends notification to counsel of record who have entered appearances.

A handwritten signature in black ink that reads "Katherine Franke". The signature is written in a cursive style with a long, sweeping underline that extends to the left.

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**EXHIBIT B:
NOTICE OF APPEAL AND
LOWER COURT ORDER**

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X

In the Matter of,

AHMAD AWAD, SOFIA DADAP, SAPHIRA LURJE,
JULIE NORRIS and VEER SHETTY,

Index No. 153826/2017

Petitioners,

NOTICE OF APPEAL

-against-

FORDHAM UNIVERSITY,

Respondent,


For a Judgment Pursuant to Article 78 of the
Civil Practice Law and Rules.

-----X

PLEASE TAKE NOTICE, that respondent Fordham University appeals to the Supreme Court of the State of New York, Appellate Division, First Judicial Department, from each and every part of the within Amended Decision, Order and Judgment of the Honorable Nancy M. Bannon, dated July 29, 2019 and entered in the office of the Clerk of the Supreme Court, New York County, on August 6, 2019.

Dated: August 30, 2019
Garden City, New York

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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

In the Matter of,

**AHMAD AWAD, SOFIA DADAP,
SAPPHIRA LURIE, JULIE NORRIS, and
VEER SHETTY,**

Petitioners,

-against-

FORDHAM UNIVERSITY,

Respondent,

**For a Judgment Pursuant to Article 78
of the Civil Practice Law and Rules.**

Index No. 153826/2017

Hon. Nancy Bannon

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that the attached is a true copy of the Amended Decision,
Order and Judgment in this matter that was entered in the office of the Clerk of the Supreme
Court, New York County, on August 6, 2019.

Dated: August 6, 2019
New York, New York

Respectfully submitted,



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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. NANCY M. BANNON PART IAS MOTION 42EFM
Justice
INDEX NO. 153826/2017
AHMAD AWAD, SOFIA DADAP, SAPPHIRA LURIE, JULIE NORRIS
Plaintiff, MOTION DATE 03/04/2018, 03/04/2018, 03/04/2018, 05/08/2019
- v -
FORDHAM UNIVERSITY, MOTION SEQ. NO. 001 002 003 004
Defendant. AMENDED DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 8, 78 were read on this motion to/for ARTICLE 78 (BODY OR OFFICER)

The following e-filed documents, listed by NYSCEF document number (Motion 002) 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77 were read on this motion to/for DISMISSAL

The following e-filed documents, listed by NYSCEF document number (Motion 003) 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98 were read on this motion to/for PREL INJUNCTION/TEMP REST ORDR

The following e-filed documents, listed by NYSCEF document number (Motion 004) 100, 101, 102, 103, 104, 105, 106, 107, 108 were read on this motion to/for AMEND CAPTION/PLEADINGS

The petition and motions are determined in accordance with the attached Amended Decision, Order and Judgment, which replaces the prior Decision, Order and Judgement, which contains an error.

7/29/2019 DATE

CHECK ONE:

Form with checkboxes for CASE DISPOSED, GRANTED, DENIED, GRANTED IN PART, OTHER. Includes signature of Nancy M. Bannon, J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 42

-----X
In the Matter of

AHMAD AWAD, SOFIA DADAP, SAPPHIRA
LURIE, and JULIE NORRIS,

Index No. 153826/17

Petitioners,

DECISION, ORDER
& JUDGMENT

v

FORDHAM UNIVERSITY,

MOT SEQ 001, 002
003, 004

Respondent.
-----X

NANCY M. BANNON, J.:

I. INTRODUCTION

In this proceeding pursuant to CPLR article 78, Ahmad Awad, Sofia Dadap, Sapphira Lurie, and Julie Norris ("the petitioners"), seek to review a determination of the respondent, Fordham University ("Fordham" or "the University"), dated December 22, 2016, denying their request to organize a club known as Students for Justice in Palestine at Fordham University ("SJP"), and to have the club recognized as a "registered organization" that is sanctioned by the University (SEQ 001). Fordham moves pursuant to CPLR 7804(f) and 3211(a)(1) and (7) to dismiss the petition (SEQ 002). The petitioners move to preliminarily enjoin Fordham from interfering with an earlier determination of Fordham's United Student Government ("USG")

Executive Board and Senate, dated November 16, 2016, approving the organization for recognition (SEQ 003). By separate motion, the petitioners move pursuant to CPLR 3025(b) to amend the petition to add Veer Shetty as an additional petitioner (SEQ 004).

The petitioners' motion to amend the petition is granted. The respondent's cross motion to dismiss the petition is denied, the petition is granted, the respondent's determination is annulled, and the petitioner's motion for a preliminary injunction is denied as academic.

II. BACKGROUND

On November 19, 2015, several undergraduate students at Fordham University, including the petitioner Ahmad Awad, applied for recognition of SJP as student club at Fordham's Lincoln Center campus. In accordance with Fordham's published rules, the students submitted all of the required paperwork, including a proposed constitution, which recited that the group's mission was "to build support in the Fordham community among people of all ethnic and religious backgrounds for the promotion of justice, human rights, liberation, and self-determination for the indigenous Palestinian people." It also stated that "SJP is organized around the principles of the call by Palestinian civil society for Boycott, Divestment and Sanctions of Israel."

Fordham's published rules include Section 2(a) of the

Fordham University Lincoln Center Campus United Student Government Operations Committee Club Guidelines ("the Guidelines"), which provides that a club's purpose, as set forth in the club's constitution, must state "how th[e] Club will benefit the Fordham community." Section 2(e) requires a "[s]tatement that the Club will not restrict membership based upon national origin, race, religion, creed, gender, sexual orientation, age, or physical handicap." Section 8(h) of the Guidelines provides that the Dean of Students has a right to veto any new club, but the Guidelines do not articulate or enumerate any grounds on which the Dean may exercise such a veto. Moreover, the Guidelines themselves are unclear as to whether that veto must be exercised prior to a vote by the USG Executive Board and Senate.

However, Section I of the 2016-2017 Fordham University Lincoln Center Campus United Student Government Operations Committee Club Registration Process provides, in relevant part, that:

"The Operations Committee will work with you in editing your constitution. After all revisions to the constitution have been made in accordance with constitutional guidelines, the packet will be submitted to the Director of the Office for Student Involvement and then to the Dean of Students.

"Once a club's constitution is approved by the Director of the Office for Student Involvement and the Dean of Students, the packet is to be forwarded to the USG Senate for their recommendations and final approval.

"Upon approval by above-mentioned parties, the club is considered a registered organization of F[ordham] C[ollege] L[incoln] C[enter] and G[abelli] S[chool of] B[usiness]."

On April 5, 2016, Awad wrote to Dr. Dorothy Wenzel, Director of the Office of Student Leadership and Community Development and New Student Orientation, seeking a response to the application from Fordham's administration. On April 26, 2016, Wenzel and a student, who was then the Vice President of Operations for USG, told Awad and another student that some minor, standard modifications needed to be made to the constitution, and that SJP should be set to be approved in autumn 2016.

Over the next several months, email correspondence was exchanged between Awad, the outgoing and incoming USG Vice-Presidents, and Wenzel concerning, among other things, whether the Fordham chapter of SJP was obligated to obtain any approvals from the national SJP organization before it could begin operations.

On October 5, 2016, Awad and other students met with Wenzel, Dean of Students Keith Eldredge, and the new Vice President of Operations for USG. At the meeting, Wenzel and Eldredge expressed concern that SJP's presence on campus and its potential support for boycott, divestment, and sanctions would "stir up controversy," and referenced a controversy that occurred when Professor Norman Finkelstein, whose scholarship supports

Palestinian rights, spoke at Fordham in 2009. Wenzel and Eldredge again asked about any requirements that the national SJP organization might impose upon the Fordham chapter, and also asked if the students would consider not using the name "Students for Justice in Palestine." The students responded that they had chosen the name Students for Justice in Palestine to connect the group to the broader movement for justice in Palestine, and that they wished to retain the name.

Wenzel added that she spoke to several Jewish faculty members about SJP in the previous academic year, and requested their opinion on whether the administration should permit SJP to be established at Fordham. Over the course of the next few weeks, Awad and other students interested in organizing SJP responded to requests for further edits to the club constitution and questions about the national organization from Eldredge, Wenzel, and USG members.

On October 27, 2016, Awad, Lurie, Dadap, and other students, along with their proposed faculty advisor Glenn Hendler, met with the USG Operations Committee. At the meeting, the USG Vice President of Operations asked if Governor Cuomo's executive order that purports to punish entities that engage in boycott, divestment, and sanctions activities aimed at Israel, or the New York City Council resolution condemning such boycott, divestment, and sanctions activities, prevented the formation of SJP at

Fordham, since SJP's constitution mentions support for such activities. The students explained to the USG's Vice President that boycotts are protected speech activity, and that such legislation could not legally prohibit their advocacy of boycott, divestment, and sanctions. The USG's Vice President told the petitioners that she would make sure that the USG held a vote on whether to approve SJP in the upcoming weeks. She also said that she would inform the Jewish Student Organization (JSO) about the upcoming vote on the recognition of SJP, as Wenzel had instructed her to let that organization provide its opinion on the question of the approval of SJP. In response, Awad and other supporters of SJO told Wenzel that it was inappropriate for another student organization to have a say in the establishment of SJP.

Prior to November 17, 2016, the Director of the Office for Student Involvement and the Dean of Students approved SJP's constitution, and forwarded the relevant packet to the USG, thus clearing the way for the USG to vote on a resolution for final approval.

On November 17, 2016, the USG Executive Board and Senate voted to approve SJP as a club at the Fordham University Lincoln Center Campus. The USG wrote to the newly formed SJP that diverse viewpoints and critical inquiry are consonant with the University's stated mission. In its determination, the USG wrote as follows:

"United Student Government invited representatives from both Students for Justice in Palestine and the Jewish Student Organization to hear their perspectives and ask questions to both groups.

"After careful deliberation, United Student Government has faith that this chapter of Students for Justice in Palestine at Fordham and its members will positively contribute to the Fordham community in such a way that is sensitive to all students on campus. United Student Government is dedicated to the safety of all students and has faith that Students for Justice in Palestine can function on campus respectfully. This chapter of Students for Justice in Palestine at Fordham fulfills a need for open discussion and demonstrates that Fordham is a place that exemplifies diversity of thought. Their presence will help to create a space for academic discussion and promote intellectual rigor on campus. We do not believe that the presence of Students for Justice in Palestine will take away from efforts to promote a safe environment on our campus.

"As with all United Student Government decisions, we welcome all students to voice their concerns and participate in the open dialogue which USG promotes."

Subsequent to the USG's vote of approval, Dean of Student Eldredge then wrote to Awad, Dadap, Lurie and other students, stating that he was informed of the decision to approve the SJP club and that he "now need[ed] to review the request before it is finalized." On the last day of the fall semester's classes in 2016, Eldredge requested a meeting with the students who were attempting to organize SJP. The meeting was conducted on December 12, 2016, with Eldredge, Wenzel, Lurie, and another student in attendance. Eldredge and Wenzel asked the students their views on boycott, divestment, and sanctions against Israel, whether the use of such activities meant the dissolution of

Israel, why students might use the term "apartheid" to describe Israel, and whether the student organizers would work with national advocacy groups Jewish Voice for Peace, J Street, and Seeds of Peace. At the meeting, Lurie and the other student explained that boycott, divestment, and sanctions are non-violent tactics meant to pressure the Israeli government to respect Palestinian rights, and they offered several examples of discriminatory laws and practices in Israel that they believed fit within the legal definition of apartheid. The two students also replied that they would like to work with Jewish Voice for Peace.

On December 22, 2016, Eldredge issued the following determination:

"After consultation with numerous faculty, staff and students and my own deliberation, I have decided to deny the request to form a club known as Students for Justice in Palestine at Fordham University. While students are encouraged to promote diverse political points of view, and we encourage conversation and debate on all topics, I cannot support an organization whose sole purpose is advocating political goals of a specific group, and against a specific country, when these goals clearly conflict with and run contrary to the mission and values of the University.

"There is perhaps no more complex topic than the Israeli-Palestinian conflict, and it is a topic that often leads to polarization rather than dialogue. The purpose of the organization as stated in the proposed club constitution points toward that polarization. Specifically, the call for Boycott, Divestment and Sanctions of Israel presents a barrier to open dialogue and mutual learning and understanding."

The petitioners thereafter commenced this CPLR article 78 proceeding, seeking to annul that determination, and compel the respondent to recognize SJP as a sanctioned club in accordance with the USG's vote of approval.

The respondent moves to dismiss the petition on the grounds that documentary evidence provides a complete defense to the proceeding, and that the petition fails to state a cause of action.

By separate motion, the petitioners move pursuant to CPLR 3025(b) to amend the petition to add Veer Shetty as an additional petitioner..

III. DISCUSSION

A. MOTION TO AMEND THE PETITION

The petitioners move pursuant to CPLR 3025(b) to amend the petition to add as an additional petitioner, Veer Shetty, a undergraduate student enrolled at the respondent University. The petitioners do not seek to add any additional claims. The respondent opposes the motion. The motion is granted for the reasons set forth the petitioners' motion papers.

It is well settled that leave to amend a pleading should be freely granted absent evidence of substantial prejudice or surprise, or unless the proposed amendment is palpably insufficient or patently devoid of merit. See CPLR 3025(b);

JPMorgan Chase Bank, N.A. v Low Cost Bearings NY, Inc., 107 AD3d 643 (1st Dept. 2013). The burden is on the party opposing the motion to establish substantial prejudice or surprise if leave to amend is granted. See Forty Cent. Park S., Inc. v Anza, 130 AD3d 491 (1st Dept. 2015). The court finds the respondent's arguments in opposition, i.e. that the proposed additional petitioner lacks standing and that the claim is untimely, to be unpersuasive, and it has wholly failed to establish any prejudice or surprise resulting from the proposed amendment.

B. MOTION TO DISMISS THE PETITION

"Courts have a restricted role in reviewing determinations of colleges and universities. A determination will not be disturbed unless a school acts arbitrarily and not in the exercise of its honest discretion, [or] it fails to abide by its own rules." Matter of Powers v St. John's Univ. Sch. of Law, 25 NY3d 210, 216 (2015) (internal quotation marks and citation omitted). Thus, a judicial challenge to a university's alleged failure to comply with its own internal regulations properly lies pursuant to CPLR article 78, and review is appropriate under the "arbitrary and capricious" standard of CPLR 7803(3). See id.; Maas v Cornell Univ., 94 NY2d 87 (1999); Matter of Harris v Trustees of Columbia Univ., 62 NY2d 956 (1984), rev'd for reasons stated in dissenting op of Kassal, J., 98 AD2d 58, 67-73 (1st Dept. 1983).

"In considering a motion to dismiss a CPLR article 78 proceeding pursuant to CPLR 3211(a)(7) and 7804(f), all of the allegations in the petition are deemed to be true and are afforded the benefit of every favorable inference." Matter of Eastern Oaks Dev., LLC v Town of Clinton, 76 AD3d 676, 678 (2nd Dept. 2010); see Leon v Martinez, 84 NY2d 83 (1994); Matter of Gilbert v Planning Bd. of Town of Irondequoit, 148 AD3d 1587 (4th Dept. 2017); Matter of Schlemme v Planning Bd. of City of Poughkeepsie, 118 AD3d 893 (2nd Dept. 2014); Matter of Ferran v City of Albany, 116 AD3d 1194 (3rd Dept. 2014); Matter of Marlow v Tully, 79 AD2d 546 (1st Dept. 1980). "In determining motions to dismiss in the context of [a CPLR] article 78 proceeding, a court may not look beyond the petition . . . where, as here, no answer or return has been filed." Matter of Scott v Commissioner of Correctional Servs., 194 AD2d 1042, 1043 (3rd Dept. 1993); see Matter of Ball v City of Syracuse, 60 AD3d 1312 (4th Dept. 2009). "Whether a plaintiff [or petitioner] can ultimately establish its allegations is not part of the calculus in determining a motion to dismiss." EBC I, Inc. v Goldman Sachs & Co., 5 NY3d 11, 19 (2005). As long as the petition alleges specific facts "giving rise to a fair inference" that the determination was arbitrary and capricious (Matter of Vyas v City of New York, 133 AD3d 505, 505 [1st Dept. 2015]), dismissal for failure to state a cause of action is not warranted.

The petition here more than satisfies that standard, as it clearly alleges that Fordham procedurally violated its own rules concerning the recognition of student clubs by permitting a dean to overrule a vote of the USG, and imposed a newly identified factor in considering whether approval is warranted or not, namely whether a group may add to the "polarization" of persons with differing opinions on contested topics of the day.

"Under CPLR 3211(a)(1), a dismissal is warranted only if the documentary evidence submitted conclusively establishes a defense to the asserted claims as a matter of law." Leon v Martinez, 84 NY2d 83, 88 (1994); see Ellington v EMI Music, Inc., 24 NY3d 239 (2014). In order for evidence to qualify as "documentary," it must be unambiguous, authentic, and "essentially undeniable." Dixon v 105 W. 75th St., LLC, 148 AD3d 623, 629 (1st Dept. 2017), citing Fontanetta v John Doe 1, 73 AD3d 78 (2nd Dept. 2010). The documentary evidence here, consisting of the administrative record itself, does not conclusively establish that the challenged decision was not arbitrary and capricious.

Generally, the denial of a motion to dismiss the petition in a CPLR article 78 proceeding is followed by the service and filing of an answer and administrative record, or return. See Matter of Kickertz v New York Univ., 25 NY3d 942 (2015). However, where "it is clear that no dispute as to the facts exists and no prejudice will result" a court, upon a respondent's motion to

dismiss, may decide the petition on the merits. Matter of Nassau BOCES Cent. Council of Teachers v Board of Coop. Educ. Servs. of Nassau County, 63 NY2d 100, 102 (1984); see Matter of Arash Real Estate & Mgt. Co. v New York City Dept. of Consumer Affairs, 148 AD3d 1137 (2nd Dept. 2017); Matter of Applewhite v Board of Educ. of the City Sch. Dist. of the City of N.Y., 115 AD3d 427 (1st Dept. 2014); Matter of Kuzma v City of Buffalo, 45 AD3d 1308 (4th Dept. 2007).

Under the circumstances presented here, service of an answer is not necessary, as the facts have been fully presented in the parties' papers, and no factual dispute remains. See Matter of Nassau BOCES Cent. Council of Teachers v Board of Coop. Educ. Servs. Of Nassau County, supra; Matter of Applewhite v Board of Educ. of the City Sch. Dist. of the City of N.Y., supra; Matter of Camacho v Kelly, 57 AD3d 297 (1st Dept. 2008).

C. MERITS OF THE PETITION

A determination is arbitrary and capricious where is not rationally based, or has no support in the record. See Matter of Gorelik v New York City Dept. of Bldgs., 128 AD3d 624 (1st Dept. 2015). A determination may also be annulled as arbitrary and capricious where the decision maker considers inappropriate factors in coming to his or her decision. See Matter of Rossakis v New York State Bd. of Parole, 146 AD3d 22 (1st Dept. 2016);

Matter of Kaufman v Incorporated Vil. of Kings Point, 52 AD3d 604 (2nd Dept. 2008). In addition, a determination of a university, acting in its administrative capacity, may be set aside where the university does not abide by its own rules. See Matter of Powers v St. John's Univ. Sch. of Law, supra.

A court's review of administrative determinations is limited to the record made before the decision maker. See Matter of Featherstone v Franco, 95 NY2d 550 (2000); Matter of Levine v New York State Liquor Auth., 23 NY2d 863 (1969); Matter of Pascazi v New York State Bd. of Law Examiners, 151 AD3d 1324 (3rd Dept. 2017). A court reviewing an administrative determination "must judge the propriety of that determination solely upon the grounds invoked" by the decision maker, "and the court is powerless to affirm the [determination] through reasoning it deems more appropriate." Matter of Stern, Simms & Stern v Joy, 48 AD2d 788, 788 (1st Dept. 1975); see Matter of Weill v New York City Dept. of Education, 61 AD3d 407 (1st Dept. 2009). "If those grounds are inadequate or improper, the court is powerless to affirm the administrative action by substituting what it considers to be a more adequate or proper basis." Matter of Scherbryn v Wayne-Finger Lakes Bd. of Cooperative Educ. Servs., 77 NY2d 753, 758 (1991); see Securities & Exch. Comm. v Chenery Corp., 332 US 194 (1947); Matter of Blum v D'Angelo, 15 AD2d 909 (1st Dept. 1962).

Here, Fordham did not abide by its own published rules

governing the approval and recognition of student clubs, inasmuch as it seemingly imposed an additional tier of review, by a dean, of an approval already rendered by the USG. This deviation from usual practice is particularly notable here, since the USG was only empowered to vote for approval of a club in the first instance where prior approval has already been granted by the Director of the Office for Student Involvement and the Dean of Students. Indeed, the Dean's abrupt change from preliminary approval to rejection was made without a rational explanation or any change in circumstances. In the context of administrative determinations, "[a] change in something from yesterday to today creates doubt. When the anticipated explanation is not given, doubt turns to disbelief" (Sierra Club v United States Army Corps of Engrs., 772 F2d 1043, 1046. [2nd Cir. 1985]), and such an unexplained change necessarily requires the conclusion that the ultimate determination was arbitrary. See id.

Moreover, the ground for overruling the USG, as articulated by Dean Eldredge, was the potential "polarization" of the Fordham community were SJP to be formally recognized. Although the Dean, in determining whether to veto any new club, has discretion to evaluate whether the club will promote Fordham's mission, this discretion is neither unlimited nor unfettered. The issue of whether a club's political message may be polarizing is not enumerated or identified as a relevant factor in any governing or operating rules, regulations, or guidelines issued by Fordham,

and appears to have been arbitrarily considered by Dean Eldredge after input from others who are critical of SJP's political beliefs. Importantly, consideration of whether a group's message may be polarizing is contrary to the notion that universities should be centers of discussion of contested issues.

"The classroom is peculiarly the marketplace of ideas. The Nation's future depends upon leaders trained through wide exposure to that robust exchange of ideas which discovers truth out of a multitude of tongues, [rather] than through any kind of authoritative selection."

Keyishian v Board of Regents 385 US 589, 603 (1967).

Contrary to Fordham's contention, its status as a private university does not mandate dismissal of the petition. Although Fordham is not a public university, and thus not expressly subject to First Amendment limitations on its right to restrict opinions that might be controversial or unpopular (see e.g. Mitchell v New York Univ., 129 AD3d 542 (1st Dept. 2015); Matter of Panarella v Birenbaum, 37 AD2d 987 [2nd Dept. 1971], affd 32 NY2d 108 [1973]), Fordham's own rules, regulations, and guidelines do not empower the Dean of Students to restrict the university's recognition of a student club based on its potential for raising issues or taking political positions that might be controversial or unpopular with a segment of the university community. Indeed, Fordham's 2005 mission statement, in relevant part, provides that:

"Fordham strives for excellence in research and teaching, and guarantees the freedom of inquiry required by rigorous thinking and the quest for truth.

"Fordham affirms the value of a core curriculum rooted in the liberal arts and sciences. The University seeks to foster in all its students life-long habits of careful observation, critical thinking, creativity, moral reflection and articulate expression.

"In order to prepare citizens for an increasingly multicultural and multinational society, Fordham seeks to develop in its students an understanding of and reverence for cultures and ways of life other than their own."

In other words, the consideration and discussion of differing views is actually part of Fordham's mission, regardless of whether that consideration and discussion might discomfit some and polarize others.

In his determination, Dean Eldredge does not provide a rational basis for concluding that SJP might encourage violence, disruption of the university, suppression of speech, or any sort of discrimination against any member of the Fordham community based on religion, race, sex, or ethnicity. His only articulated concern was that SJP singled out one particular country for criticism and boycott. Again, this is not an established ground for denying recognition to a student club. To the extent that Dean Eldredge claims authority to reject any club that criticizes a particular country, that same rule could be applied to students protesting or criticizing China's occupation and annexation of Tibet, Russia's occupation of the Crimea, or Iraq's one-time occupation of Kuwait.

Since there is nothing in the record of Dean Eldredge's determination supporting his authority to reject an application

of a student club because it criticized the policies of only one nation, the determination must be annulled as arbitrary and capricious. Even if he had such authority, there is nothing in the record of his determination requiring Fordham to apply such a rule consistently. Therefore, it must be concluded that his disapproval of SJP was made in large part because the subject of SJP's criticism is the State of Israel, rather than some other nation, in spite of the fact that SJP advocates only legal, nonviolent tactics aimed at changing Israel's policies. This also renders his determination arbitrary and capricious, since the defense of a particular nation is not a factor countenanced by Fordham's rules, regulations, and guidelines for the approval of student clubs.

At present, there is no need to remand for further administrative action, since the administrative record is sufficiently developed for judicial consideration of whether SJP followed all applicable rules, regulations, and guidelines in applying for approval, and whether Fordham arbitrarily and capriciously failed to abide thereby, and arbitrarily considered inappropriate factors in reaching its ultimate determination. See Matter of Pantelidis v New York City Bd. of Stds. & Appeals, 43 AD3d 314 (1st Dept. 2007).

D. MOTION FOR A PRELIMINARY INJUNCTION

Since the court is granting the petition and annulling

Fordham's determination, the petitioners' motion to preliminarily enjoin Fordham from interfering with the USG's approval has been rendered academic.

IV. CONCLUSION

In light of the foregoing, it is

ORDERED that the petitioners' motion to amend the petition to add Veer Shetty as a petitioner (SEQ 004) is granted and the amended petitioner in the form annexed to the moving papers shall be deemed served upon the respondent upon service of this order with notice of entry, and it is further,

ORDERED that the respondent's motion to dismiss the petition (SEQ 002) is denied; and it is further,

ORDERED and ADJUDGED that the amended petition (SEQ 001) is granted, the determination of Dean Keith Eldredge dated December 22, 2016, disapproving the application of Students For Justice in Palestine at Fordham University to be recognized as a student club is annulled, and Fordham University is directed to recognize Students For Justice in Palestine at Fordham University as a university-sanctioned club in accordance with the approval of the United Student Government Executive Board and Senate dated November 17, 2016; and it is further,

ORDERED that the petitioners' motion to preliminarily enjoin the respondent from interfering with the approval of the United Student Government Executive Board and Senate dated November 17,

2016, pending hearing of the petition herein (SEQ 003), is denied as academic.

This constitutes the Decision, Order, and Judgment of the court.

Dated: July 29, 2019

ENTER:

J.S.C.


HON. NANCY M. BANNON

Supreme Court of the State of New York

Appellate Division: First Judicial Department

Informational Statement (Pursuant to 22 NYCRR 1250.3 [a]) - Civil

Case Title: Set forth the title of the case as it appears on the summons, notice of petition or order to show cause by which the matter was or is to be commenced, or as amended.		For Court of Original Instance	
AHMAD AWAD, SOFIA DADAP, SAPPHIRA LURIE, JULIE NORRIS and VEER SHETTY - against - FORDHAM UNIVERSITY		Date Notice of Appeal Filed	
		For Appellate Division	
Case Type	Filing Type		
<input type="checkbox"/> Civil Action <input type="checkbox"/> CPLR article 75 Arbitration	<input checked="" type="checkbox"/> CPLR article 78 Proceeding <input type="checkbox"/> Special Proceeding Other <input type="checkbox"/> Habeas Corpus Proceeding	<input checked="" type="checkbox"/> Appeal <input type="checkbox"/> Original Proceedings <input type="checkbox"/> CPLR Article 78 <input type="checkbox"/> Eminent Domain <input type="checkbox"/> Labor Law 220 or 220-b <input type="checkbox"/> Public Officers Law § 36 <input type="checkbox"/> Real Property Tax Law § 1278	
Nature of Suit: Check up to three of the following categories which best reflect the nature of the case.			
<input type="checkbox"/> Administrative Review	<input type="checkbox"/> Business Relationships	<input type="checkbox"/> Commercial	<input type="checkbox"/> Contracts
<input checked="" type="checkbox"/> Declaratory Judgment	<input type="checkbox"/> Domestic Relations	<input type="checkbox"/> Election Law	<input type="checkbox"/> Estate Matters
<input type="checkbox"/> Family Court	<input type="checkbox"/> Mortgage Foreclosure	<input checked="" type="checkbox"/> Miscellaneous	<input type="checkbox"/> Prisoner Discipline & Parole
<input type="checkbox"/> Real Property (other than foreclosure)	<input type="checkbox"/> Statutory	<input type="checkbox"/> Taxation	<input type="checkbox"/> Torts

Informational Statement - Civil

Appeal

Paper Appealed From (Check one only):		If an appeal has been taken from more than one order or judgment by the filing of this notice of appeal, please indicate the below information for each such order or judgment appealed from on a separate sheet of paper.	
<input type="checkbox"/> Amended Decree	<input type="checkbox"/> Determination	<input type="checkbox"/> Order	<input type="checkbox"/> Resettled Order
<input type="checkbox"/> Amended Judgement	<input type="checkbox"/> Finding	<input checked="" type="checkbox"/> Order & Judgment	<input type="checkbox"/> Ruling
<input type="checkbox"/> Amended Order	<input type="checkbox"/> Interlocutory Decree	<input type="checkbox"/> Partial Decree	<input type="checkbox"/> Other (specify):
<input type="checkbox"/> Decision	<input type="checkbox"/> Interlocutory Judgment	<input type="checkbox"/> Resettled Decree	
<input type="checkbox"/> Decree	<input type="checkbox"/> Judgment	<input type="checkbox"/> Resettled Judgment	
Court: Supreme Court	County: New York		
Dated: 07/29/2019	Entered: August 6, 2019		
Judge (name in full): Nancy M. Bannon	Index No.: 153826/2017		
Stage: <input type="checkbox"/> Interlocutory <input checked="" type="checkbox"/> Final <input type="checkbox"/> Post-Final	Trial: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If Yes: <input type="checkbox"/> Jury <input type="checkbox"/> Non-Jury		

Prior Unperfected Appeal and Related Case Information

Are any appeals arising in the same action or proceeding currently pending in the court? Yes No
If Yes, please set forth the Appellate Division Case Number assigned to each such appeal.

Where appropriate, indicate whether there is any related action or proceeding now in any court of this or any other jurisdiction, and if so, the status of the case:

Original Proceeding

Commenced by: <input type="checkbox"/> Order to Show Cause <input type="checkbox"/> Notice of Petition <input type="checkbox"/> Writ of Habeas Corpus	Date Filed:
Statute authorizing commencement of proceeding in the Appellate Division:	

Proceeding Transferred Pursuant to CPLR 7804(g)

Court: Choose Court	County: Choose County
Judge (name in full):	Order of Transfer Date:

CPLR 5704 Review of Ex Parte Order:

Court: Choose Court	County: Choose County
Judge (name in full):	Dated:

Description of Appeal, Proceeding or Application and Statement of Issues

Description: If an appeal, briefly describe the paper appealed from. If the appeal is from an order, specify the relief requested and whether the motion was granted or denied. If an original proceeding commenced in this court or transferred pursuant to CPLR 7804(g), briefly describe the object of proceeding. If an application under CPLR 5704, briefly describe the nature of the ex parte order to be reviewed.

This is an appeal from a Decision, Order & Judgment entered in the Supreme Court, New York County on August 6, 2019. The Supreme Court's Order granted Petitioners' Article 78 Petition seeking review of a December 22, 2016 determination by Fordham University denying Petitioners' request to organize a club known as Students for Justice in Palestine at Fordham University. In its Order, the Supreme Court denied the University's cross-motion to dismiss the Petition and to interpose an answer pursuant to CPLR 7804. The Supreme Court held that the University's determination was arbitrary and capricious in that it did not follow its policy governing the recognition and approval of student organized clubs and directed that the University recognize Students for Justice in Palestine as a University sanctioned club.

Informational Statement - Civil

Issues: Specify the issues proposed to be raised on the appeal, proceeding, or application for CPLR 5704 review, the grounds for reversal, or modification to be advanced and the specific relief sought on appeal.

1. Did the court err in granting the Petition annulling Fordham's determination, dated December 22, 2016, denying Students for Justice in Palestine club status?
2. Did Fordham comply with its policy and procedure governing the recognition and approval of student clubs?
3. Was Fordham's decision arbitrary, capricious or unsupported by a rational basis?

Party Information

Instructions: Fill in the name of each party to the action or proceeding, one name per line. If this form is to be filed for an appeal, indicate the status of the party in the court of original instance and his, her, or its status in this court, if any. If this form is to be filed for a proceeding commenced in this court, fill in only the party's name and his, her, or its status in this court.

No.	Party Name	Original Status	Appellate Division Status
1	AHMAD AWAD	Petitioner	Respondent
2	SOFIA DADAP	Petitioner	Respondent
3	SAPPHIRA LURIE	Petitioner	Respondent
4	JULIE NORRIS	Petitioner	Respondent
5	VEER SHETTY	Petitioner	Respondent
6	FORDHAM UNIVERSITY	Respondent	Appellant
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Informational Statement - Civil

Attorney Information

Instructions: Fill in the names of the attorneys or firms for the respective parties. If this form is to be filed with the notice of petition or order to show cause by which a special proceeding is to be commenced in the Appellate Division, only the name of the attorney for the petitioner need be provided. In the event that a litigant represents herself or himself, the box marked "Pro Se" must be checked and the appropriate information for that litigant must be supplied in the spaces provided.

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Attorney/Firm Name:

Address:

City:

State:

Zip:

Telephone No:

E-mail Address:

Attorney Type: Retained Assigned Government Pro Se Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above):

STATE OF NEW YORK)
)
) ss.:
)
COUNTY OF NASSAU)

ELIZABETH A. LIOTTA, being duly sworn, deposes and says:

That she is over the age of 21 years, resides at Seaford, New York and is not a party to this action.

That on the 30th day of August 2019, she served the within Notice of Appeal, upon the parties listed below, by depositing a true copy thereof in a properly sealed wrapper in a depository maintained by the United States Postal Service and in a properly sealed Federal Express wrapper in a depository maintained by Federal Express located on the premises at Garden City Center, 100 Quentin Roosevelt Boulevard, Garden City, New York 11530, addressed as follows:

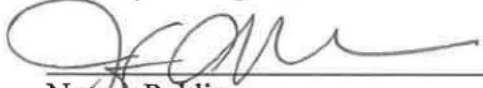
Maria C. LaHood
Baher Azmy
Ruhan Nagra
Attorneys for Petitioners Ahmad Awad,
Sofia Dadap, Sapphira Lurie, and Julie Norris
Center for Constitutional Rights
666 Broadway, 7th Floor
New York, NY 10012

Radhika Sainath
Attorney for Petitioners
Palestine Legal
666 Broadway, 7th Floor
New York, NY 10012

that being the addresses designated on the latest papers served in this action.


ELIZABETH A. LIOTTA

Sworn to before me this
30th day of August, 2019


Notary Public

JENNIFER MCLAUGHLIN
NOTARY PUBLIC, State of New York
No. 02MC6110089
Qualified in Nassau County
Commission Expires May 24, 2020